

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 23-60497-CV-WILLIAMS

G.T.,

Plaintiff,

v.

MSC CRUISES, S.A.,

Defendant.

ORDER

THIS MATTER is before the Court on Magistrate Judge Panayotta D. Augustin-Birch's Report and Recommendation (DE 24) ("**Report**") on Defendant MSC Cruises, S.A. ("**Defendant**") Motion to Dismiss (DE 9) ("**Motion**").¹ In the Report, Magistrate Judge Augustin-Birch recommends that the Court deny Defendant's Motion. (DE 24 at 1.) Specifically, Judge Augustin-Birch finds that Plaintiff states a claim in accordance with the applicable pleading standards and "plausibly alleges that Defendant was on actual notice of the condition and that the condition was not open and obvious." (*Id.* at 3.) Defendant filed Objections to the Report (DE 27) ("**Objections**"), to which Plaintiff filed a Response (DE 28).² Specifically, Defendant objects to the fact that, in the Report, Judge Augustin-


¹ On May 19, 2023, the Court referred Defendant's Motion to Judge Augustin-Birch for a report and recommendation. (DE 12.)

² On August 25, 2023, Defendant filed a Reply in Support of its Objection to the Report and Recommendation on Motion to Dismiss. (DE 32.) The rules do not provide for filing a reply, and Defendant did so without leave of Court. Accordingly, the reply (DE 32) is **STRICKEN**.

Birch fails to take into account the Eleventh Circuit's decision in *Holland v. Carnival Corporation*, 50 F.4th 1088 (11th Cir. 2022) when she concludes that Plaintiff properly pled Defendant's actual notice in accordance with Federal Rule of Civil Procedure 8. (DE 27 at 2.)³ The Court conducted a *de novo* review of the portions of the Report to which Defendant objected and a review of the Report for clear error. Having carefully reviewed the Report, Objections, record, and applicable law, the Court agrees with Judge Augustin-Birch's well-reasoned analysis and conclusion that Defendant's Motion be denied. Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Report (DE 24) is **AFFIRMED AND ADOPTED**.
2. Defendant's Motion (DE 9) is **DENIED**.
3. Defendant shall file its answer to the Complaint within **fourteen (14) days** of the date of this Order. See Fed. R. Civ. P. 12.

DONE AND ORDERED in Chambers in Miami, Florida, this 29th day of August, 2023.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

³ Defendant's Objections are improper. They merely state arguments, in some instances verbatim, that were presented to Judge Augustin-Birch before she issued her Report. (*Compare* DE 27, *with* DE 9, *and* DE 22.) However, it is well settled that an objecting party may not "submit [] papers to a district court which are nothing more than a rehashing of the same arguments and positions taken in the original papers submitted to the Magistrate Judge. Clearly, parties are not to be afforded a 'second bite at the apple' when they file objections to a [Report]." *Marlite, Inc. v. Eckenrod*, 2012 WL 3614212, at *2 (S.D. Fla. Aug. 21, 2012) (quoting *Camardo v. Gen. Motors Hourly-Rate Emps. Pension Plan*, 806 F. Supp. 380, 382 (W.D.N.Y. 1992)).